

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNY ALLEN,

Petitioner,

Case No. 1:07-cv-809

v.

Honorable Wendell A. Miles

JOHN PRELESNIK,

Respondent.

ORDER REGARDING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. On December 5, 2007, the Court entered an opinion and judgment dismissing the petition. The Court also denied Petitioner a certificate of appealability. The judgment followed the Court's *de novo* review of Petitioner's objections to the report and recommendation of the magistrate judge. Petitioner has now filed a notice of appeal, a motion for leave to proceed *in forma pauperis* on appeal (docket #20) and a motion for certificate of appealability (docket # 18).

Sixth Circuit Internal Operating Procedure 5.1 provides that a \$450.00 docketing fee and a \$5.00 filing fee must be paid to the district court when a notice of appeal is filed. Petitioner was permitted to proceed before this Court *in forma pauperis*. Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, he may continue that status on appeal unless this court certifies that his appeal is not taken in good faith. Good faith is judged objectively and an appeal is taken in good faith when it seeks review of an issue which is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1961). Detailed reasons for dismissal of the petition were provided in the report and

recommendation (docket #10), and the Court's opinion dismissing the petition (docket #15). The Court reaffirms its decision and finds that the issues on which Petitioner might seek review are frivolous. The Court, therefore, certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court with thirty days of this order. Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

Petitioner also seeks a certificate of appealability. The Court previously denied Petitioner a certificate of appealability. The Court has reviewed Petitioner's motion and supporting brief and reaffirms its decision to deny a certificate of appealability. Accordingly:

IT IS ORDERED that Petitioner's motion for leave to proceed on appeal *in forma pauperis* (docket #20) is DENIED. The Court certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court within thirty days of this order. Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

IT IS FURTHER ORDERED that Petitioner's motion for certificate of appealability (docket #18) is DENIED.

Dated: February 12, 2008

/s/ Wendell A. Miles
Wendell A. Miles
Senior United States District Judge